IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT

JODHPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 7266/2005

(Smt. Madina Bano Vs. State of Rajasthan & Ors.)

Date of Order : 16/05/2007

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Santosh Choudhary for the petitioner.
Mr. Rameshwar Dave, Dy. Govt. Advocate for the respondents

BY THE COURT:-

The petitioner applied for the post of Teacher Gr.III under the category woman divorcee in pursuance of advertisement Annex.7. The respondents by order dated 20.10.2005 Annex.8 declined to consider the case of the petitioner on the ground that the petitioner failed to file the decree of dissolution of marriage.

It is contended by learned counsel for the petitioner that the petitioner is governed by the Muslim Personal Law and in Muslim Personal Law, even the statement of muslim lady stating that she has been given Talak even orally, has to be accepted and the respondents fell in error in insisting upon filing the decree of dissolution of marriage. Learned counsel has relied

on a decision of this Court in State of Rajasthan and others Vs. Mst. Shameem Akhtar, RLW 1998 (1) Raj. 111 wherein this Court held as under :-

> "it is not disputed in the present case before me that plaintiff-non-petitioner has produced an affidavit along with Talaknama. In such a situation, the defendant-petitioners are not entitled to insist upon to produce a decree of divorce from a Court. The act of the defendant-petitioners in the present case, demanding from the plaintiff-non-petitioner to produce a decree of divorce from a court to include her name in Schedule 'A' meant for divorced women candidates for appointment on the post of Teacher Gr.III so as to fulfill the eligibility criteria according to advertisement published in daily newspaper "Rajasthan Patrika", is impermissible within the meaning of Articles 14 and 16 of the Constitution. The demand of a decree of divorce from a Court from the non-petitioner-plaintiff to include her name in Schedule 'A' meant for divorced woman candidates for her appointment on the post of Teacher Gr.III amounts to denial of equal opportunity for all citizens similarly circumstanced in matters relating to employment."

A reply to the writ petition has been filed stating therein that the cut off marks for appointment under the category 'divorced women' is 41.050 marks whereas the petitioner secured 36.663 marks. Thus, the petitioner secured much less marks than the cut off marks and even otherwise not eligible for selection and appointment. So far as insistence of the respondents for producing the decree of dissolution of marriage is concerned, the controversy stands concluded by this Court in State of Rajasthan and others Vs. Mst. Shameem Akhtar (supra). However, this controversy need not to be gone into for the

reason that even if the order insisting production of decree of dissolution of marriage is set aside, then also, the petitioner is not eligible for selection and appointment.

In this view of the matter, the writ petition stands dismissed. Stay petition also stands dismissed. There shall be no order as to costs.

(H.R.PANWAR),J.

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